

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

Warren Russell,

Plaintiff,

vs.

Bryan Stirling and Martin Frink,

Defendants.

Civil Action No. 2:19-cv-1965-CMC

ORDER

This matter is before the court on Plaintiff's Complaint filed July 12, 2019.¹ ECF No. 2. In accordance with 28 U.S.C. § 636(b) and Local Civil Rule 73.02 (B)(2), D.S.C., this matter was referred to United States Magistrate Judge Mary Gordon Baker for pre-trial proceedings and a Report and Recommendation ("Report") on dispositive issues.

On August 2, 2019, the Magistrate Judge issued a Proper Form Order and a Reference Order, granting Plaintiff's motion to proceed *in forma pauperis* and denying his motion for hearing, and also notifying Plaintiff portions of his Complaint were subject to summary dismissal for failure to state a claim. ECF Nos. 7, 8. Plaintiff was given an opportunity to amend his Complaint and was notified that if he failed to do so, the Magistrate Judge would recommend summary dismissal on some claims. ECF No. 7. Plaintiff did not respond.²

¹ Plaintiff originally filed this Complaint on June 13, 2019 with another inmate, David Harrell. The court determined the two plaintiffs would not be permitted to proceed in a single suit, terminated Plaintiff from that suit, created a new case, and filed this Complaint for Plaintiff only. ECF No. 1. Harrell's suit continues on the original docket.

² There was no indication, however, that he did not receive the Orders – the mail was not returned to the court.

On September 12, 2019, the Magistrate Judge issued a Report recommending certain claims and Defendant Frink be summarily dismissed. ECF No. 15. The Report also recommended Plaintiff's equal protection claim against Defendant Stirling for race-based prison transfers be allowed to proceed. The Magistrate Judge advised Plaintiff of the procedures and requirements for filing objections to the Report and the serious consequences if he failed to do so. The Report was sent to the address identified by Plaintiff and previously utilized to send Orders to him. ECF No. 16. On September 23, 2019, the mail was returned as undeliverable. ECF No. 17. Plaintiff has not filed a notification of change of address and did not file objections or otherwise respond to any mailing from the court.

The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight, and the responsibility to make a final determination remains with the court. *See Mathews v. Weber*, 423 U.S. 261 (1976). The court is charged with making a *de novo* determination of any portion of the Report of the Magistrate Judge to which a specific objection is made. The court may accept, reject, or modify, in whole or in part, the recommendation made by the Magistrate Judge or recommit the matter to the Magistrate Judge with instructions. *See* 28 U.S.C. § 636(b). The court reviews the Report only for clear error in the absence of an objection. *See Diamond v. Colonial Life & Accident Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005) (stating that "in the absence of a timely filed objection, a district court need not conduct a *de novo* review, but instead must only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.") (citation omitted).

After a review of the record, the applicable law, and the Report and Recommendation of the Magistrate Judge, the court finds no clear error and agrees with the Report's recommendation certain claims and Defendant Frink should be dismissed. Accordingly, the court adopts the Report by reference in this Order. Defendant Frink is hereby dismissed without prejudice, as are Plaintiff's claims other than the equal protection claim against Defendant Stirling. This case is referred to the Magistrate Judge for further pre-trial proceedings.

IT IS SO ORDERED.

s/Cameron McGowan Currie
CAMERON MCGOWAN CURRIE
Senior United States District Judge

Columbia, South Carolina
October 7, 2019